

**REMARKS**

Claims 1-22 have been previously cancelled. Claims 23-48 have been previously added and are now active in this application.

**REQUEST FOR RECONSIDERATION**

Restriction has been required from among one of the following groups:

Group I, Claims 23-33 and 48, in part, drawn to a recombinant protein which comprises concatenated fragments of the *Streptococcus pneumoniae* PBP2x protein;

Group II, Claims 34 and 48, in part, drawn to antibodies against a recombinant protein which comprises concatenated fragments of the *Streptococcus pneumoniae* PBP2x protein;

Group III, Claims 35, 39-43, and 48, in part, drawn to nucleic acid molecules which encode a recombinant protein which comprises concatenated fragments of the *Streptococcus pneumoniae* PBP2x protein, and vectors comprising said nucleic acids;

Group IV, Claims 36-38 and 48, in part, drawn to primers that can amplify the sequence encoding PBP2x;

Group V, Claims 44-45, drawn to methods for screening antibiotics by detecting binding of a test compound with a recombinant protein which comprises concatenated fragments of the *Streptococcus pneumoniae* PBP2x protein; and

Group VI, Claims 46-47, drawn to methods for identifying antibiotics by determining the three-dimensional structure of a recombinant protein which comprises concatenated fragments of the *Streptococcus pneumoniae* PBP2x protein, and identifying compounds capable of binding to said protein.

In responding to the restriction requirement, Applicants hereby elect, with traverse, Group I, Claims 23-33 and 48.

The Requirement for Restriction is respectfully traversed for several reasons.

First, a “single general inventive concept” does, in fact, exist for all pending claims in satisfaction of PCT Rule 13.1 as defined in PCT Rule 13.2. Notably, PCT Rule 13.2 provides:

Where a group of inventions is claimed in one and the same international application, the requirement of unity of invention referred to in Rule 13.1 shall be fulfilled only when there is a technical relationship among those inventions involving one more of the same or corresponding special technical features. The expression “special technical features” shall mean those technical features that define a contribution which each of the claimed inventions, concluded as a whole, makes over prior art.

Importantly, it is respectfully submitted that the Examiner’s attempted distinction from among 1) proteins, 2) antibodies against the proteins, 3) nucleic acid molecules encoding the proteins, 4) primers amplifying the encoding sequences, 5) methods for screening antibodies and 6) methods for identifying antibiotics is a false distinction for purposes of determining whether PCT Rules 13.1 and 13.2 have been satisfied.

In fact, all of the identified claim grouping relate technically to the recombinant protein containing concatenated fragments of the *Streptococcus pneumoniae* PBP2x protein. For example, the antibody arises as a consequence of the protein. Moreover, there is no evidence of record that establishes that the claimed aspects of the present invention do not “define a contribution . . . over the prior art.” Thus, in the absence of such evidence, it must be presumed that all of these related aspects of the present

invention do define a contribution over the prior art. That is, Rules 13.1 and 13.2 have been satisfied.

Second, PCT Rule 13.3 makes clear that:

The determination whether a group of inventions is so linked as to form a single general inventive concept shall be made without regard to whether the inventions are claimed in separate claims or as alternatives within a single claim.

This PCT rule is identical to 37 C.F.R. 1.475(e) and is thus, incorporated into U.S. practice. Thus, the Examiner must forego the temptation to urge a lack of unity of invention merely because several categories of claims are presented.

Finally, Applicants respectfully submit that the search and examination of all currently pending claims would not pose an undue burden on the Examiner. Section 803 of the Manual of Patent Examining Procedure (MPEP) states that “[I]f the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions.” There is no evidence of record that a search of all identified aspects of the present invention would present a “serious burden.” In view of the above, Applicants respectfully request examination of all currently pending claims.

In responding to this Restriction Requirement, Applicants take no position as to whether the claims of the various identified claim groups define patentably distinct inventions.

### **CONCLUSION**

In light of the above, Applicants believe that this application is now in condition for examination on the merits. If any points remain in issue which the Examiner feels

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may be best resolved through a personal or telephonic interview, the Examiner is respectfully requested to contact the undersigned at the telephone number listed below.

Respectfully submitted,  
MERCHANT & GOULD, P.C.

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